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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,017

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EXAMINER

HELVEY, PETER N.

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

09/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,017	<b>Applicant(s)</b> DALGLEISH ET AL.	
	<b>Examiner</b> PETER HELVEY	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-26 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/7/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group 1, Claims 13-25 in the reply filed on June 7, 2010 is acknowledged. The traversal is on the ground(s) that there is no search burden on the examiner due to the Australian Patent Office Search Report. This is not found persuasive because the examiner is required to search US Patent documents in conjunction with the instant National Stage Entry and the two inventions would clearly require additional search queries and searching different classes and subclasses.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 26 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 7, 2010.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by *Bose* (US 5007233).

*Bose* discloses an as-manufactured multi-wall sack that comprises an inner pouch and an outer bag, with the sack having a top end that (a) is open in the as-manufactured form of the sack (as manufactured form before closing) so that the sack can be filled with product via the open end and (b) is formed so that it can be closed to form a top block end (sack taught by *Bose* clearly “can be closed” by a top end block), and wherein, in the as-manufactured form of the sack, the sack comprises pressure adhesive (green tack 18 resists pressure of filled bag from falling as described by specification. Where applicant has failed to further define that the adhesive is pressure-activated, as was done with the heat-activated adhesive, the examiner considers an adhesive that resists pressure to meet the broadest reasonable scope of "pressure adhesive") that connects together the inner pouch and the outer bag at the open top end of the sack (Fig. 4).

The examiner notes that the terms typically and where possible render any structural limitations following those phrases optional. As such, those limitations have been considered but do not patentably define around that taught by *Bose* which clearly could be made from the specified materials or with the specified adhesive positioning and folding steps.

The examiner further reminds applicant that the presence of process limitations on product claims, wherein the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. In re Stephens 145 USPQ 656 (CCPA 1965). The recited folding steps have been considered however are not considered to patentably define over that taught by *Bose* because the bag of *Bose* could clearly be folded in the manner claimed by applicant.

Regarding the limitation, wherein the amount and/or the type of adhesive is selected so that the adhesion of the inner pouch to the outer bag is greater on one of a front or a rear side of the sack than on the opposite side of the sack so that, as part of a sequence of steps to close the outer bag after a step of heat sealing the inner pouch closed, the front and rear sides of the outer bag can be folded outwardly with the sealed inner pouch being selectively detached from one of the sides of the outer bag and being retained by the other side, the examiner notes language is sufficiently broad to allow the following interpretation:

The examiner has interpreted the amount of adhesive (18) taught by *Bose* to more strongly adhere the inner bag to the outer bag on the sides with the adhesive than the opposing sides without the adhesive, which have an amount of no adhesive selected. This clearly results a device where “as part of a sequence of steps to close the outer bag after a step of heat sealing the inner pouch closed, the front and rear sides of the outer bag can be folded outwardly with the sealed inner pouch being selectively detached from one of the sides of the outer bag and being retained by the other side” as claimed.

*Bose* further discloses the sack comprises heat-activated adhesive (20) on sections of the outer bag that adhere to other sections of the outer bag as part of the sequence of steps to close the outer bag; the positions of the sections of the outer bag that carry heat-activated adhesive are selected so that the sequence of steps to close the outer bag where possible positions the heat-activated adhesive sections so that the sections do not overlies the inner pouch (see note below regarding interpretation of “where possible” limitations).

*Bose* further discloses the sack being filled and closed (abstract). The examiner further considers the releasable adhesive (20 used to close the outer bag taught by *Bose* to meet the scope of an "easy open" feature as claimed.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bose* as applied to claim 21 above, and further in view of *Strand* (US 5350239).

*Bose* discloses all limitations of the claims as detailed above except does not expressly disclose the vent seal with tortuous path as claimed by applicant.

However, *Strand* teaches providing a vent seal with a tortuous path in a liner bag (Fig. 6; col. 5, ll. 35 - col. 6, ll. 25).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to attach add the vent seal taught by *Strand* to the bag assembly taught by *Bose*, in order to prevent excess air accumulation during periods of prolonged storage (col. 2, ll. 20-40).

7. Claims 24 and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over *Bose* as applied to claim 21 above, and further in view of *Hoevel* (US 5836444).

*Bose* discloses all limitations of the claims as detailed above except does not expressly disclose the product ID coding as claimed by applicant.

However, *Hoevel* teaches providing product ID coding on packaging (col. 4, ll. 10-20).

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At the time of the invention, it would have been obvious to a person having ordinary skill in the art to provide product coding as taught by *Hoevel* to the bag assembly taught by *Bose*, in order to allow identification in many countries (col. 4, ll. 10-20).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./

Examiner, Art Unit 3782

September 17, 2010

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782